

No. 1984-27

AN ACT

HB 1617

Amending the act of December 6, 1967 (P.L.678, No.318), entitled "An act to promote the education and welfare of the people of the Commonwealth of Pennsylvania; to provide educational facilities at nonprofit institutions of higher education in the Commonwealth of Pennsylvania; and creating the Pennsylvania Higher Educational Facilities Authority as a body corporate and politic with power to acquire, construct, improve, equip, furnish, operate, lease, and dispose of projects; authorizing and regulating the issuance of notes and bonds and the payment thereof by said authority; and providing that no debt, obligation, or credit of the Commonwealth shall be incurred in the exercise of any powers granted by this act," providing for the financing of projects through loans by the authority.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3(4) and (8) of the act of December 6, 1967 (P.L.678, No.318), known as The Pennsylvania Higher Educational Facilities Authority Act of 1967, are amended and a clause is added to read:

Section 3. Definitions.—As used in this act:

* * *

(4) "Project" means any educational facility which the authority is authorized to acquire, construct, *finance*, improve, install, maintain or operate under the provisions of this act;

* * *

(8) "Cost of a project" means and includes, but shall not be limited to, all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and rehabilitation of a project, including all lands, structures, real or personal property, rights, rights of way, roads, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all utility lines, structures or equipment, the charges, interest prior to, during and for a period of six months after completion of such construction and acquisition, provisions for reserves for principal and interest and for extensions, enlargements, additions and improvements, cost of architectural, engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses¹ necessary or incident to determining the feasibility or practicability of constructing the project and such other expense as may be necessary or incident to the construction [and], acquisition *or financing* of the project[, the financing of such construction and acquisition] and the placing of the project in operation[.];

(9) "*Financing*" or "*to finance*" means and includes the lending or providing of funds to a college for payment of the cost of a project.

¹ "expenses" omitted in enrolled bill.

Section 2. The first paragraph and clauses (7), (8) and (14) of the second paragraph of section 5 of the act are amended and the second paragraph is amended by adding a clause to read:

Section 5. Purposes and General Powers.—The authority is created for the purpose of acquiring, constructing, *financing*, improving, maintaining and operating any educational facility.

The authority is hereby granted and shall have and may exercise all the powers necessary or convenient for the carrying out of the aforesaid purposes, including but without limiting the generality of the foregoing, the following rights and powers:

* * *

(5.1) To finance projects by making loans to colleges, which loans may be evidenced by, and secured as may be provided in, loan agreements, mortgages, security agreements or any other contracts, instruments or agreements, which contracts, instruments or agreements may contain such provisions as are referred to in clause (4) or such other provisions as the authority shall determine necessary or desirable for the security or protection of the authority or its bondholders. All such provisions shall be a part of the contract with the holders of the bonds of the authority issued with respect to such project, and all colleges are hereby authorized to enter into such contracts, instruments or agreements containing the provisions herein authorized, anything in the charters of such colleges or in any other law to the contrary notwithstanding;

* * *

(7) To obtain from the State Public School Building Authority, for a fee, those executive, fiscal, and administrative services, which are not available from the college for whose use the project is being constructed *or financed*, as may be required to carry out functions of the authority under this act;

(8) To fix, alter, charge and collect rentals and other charges **[for the use] in respect** of any educational facility **[of,]** or for the services rendered by~~[,]~~ the authority, at reasonable rates to be determined by it for the purpose of providing for the payment of the expenses of the authority, not provided for otherwise, the acquisition, construction, *financing*, improvement, repair, equipping and furnishing, maintenance and operation of any educational facility, the payment of the principal of, and interest on, its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations;

* * *

(14) Notwithstanding any other provisions contained in this act, to combine for financing purposes, with the consent of all **[leasing]** colleges involved, the project or the projects and some or all future projects of any two or more colleges, and to provide reserves, out of lease rentals or other funds made available for the purpose, for debt service, maintenance, repairs and replacements;

* * *

Section 3. Sections 6(c) and (d), 12 and 14 of the act are amended to read:

Section 6. Purposes and Powers, Bonds.—* * *

(c) Any trust indenture, resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof as to (i) pledging all or any of the revenues, rentals or receipts and contract rights of the authority from such projects or properties, as the college or colleges *owning, using or* leasing the same may approve; (ii) the acquisition, construction, *financing*, improvement, operation, extension, enlargement, maintenance and repair, of any project or projects, and the duties of the authority with reference thereto; (iii) the terms and provisions of the bonds; (iv) limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, under such indenture or resolution, or of any loan or grant by the United States may be applied; (v) the rate of rentals and other charges for use of any educational facility of, or for the services rendered by the authority, including limitations upon the power of the authority to modify any leases or other agreements, pursuant to which any rentals or other charges are payable; (vi) the setting aside of reserves or sinking funds and the regulation and disposition thereof, provided that any income received from the investment of such reserves or sinking funds shall be applied in reduction of the rentals *or other charges* payable by the college for whose project the same are created; (vii) limitations on the issuance of additional bonds; (viii) the terms and provisions of any deed **[or] of** trust or indenture securing the bonds, or under which the same may be issued; and (ix) any other or additional agreements with the holders of the bonds.

(d) The authority may enter into any deeds of trust, indentures or other agreements with any bank or trust company, or other person or persons in the United States having power to enter into the same, including any Federal or other governmental agency, as security for such bonds, and may assign and pledge all or any of the revenues, rentals, receipts, and contract rights of the authority thereunder. Such deed of trust, indenture or other agreement may contain such provisions as may be customary in such instruments, or as the authority may authorize, including (but without limitation) provisions as to (i) the acquisition, construction, *financing*, improvement, operation, maintenance, and repair of any project or projects, and the duties of the authority with reference thereto; (ii) the application of funds and the safeguarding of funds on hand or on deposit; (iii) the rights and remedies of said trustee and the holders of the bonds (which may include restrictions upon the individual right of action of such bondholders); and (iv) the terms and provisions of the bonds, or the resolutions authorizing the issuance of the same: Provided further, That nothing in this act shall prevent the authority from obtaining temporary financing where necessary or desirable for any project by issuance of negotiable notes or other obligations, the maturity of which shall not exceed five years from the date of issue, and which shall be paid, as to both principal and interest, from proceeds of sale of bonds of the authority, in anticipation of which said notes or obligations were issued.

Said bonds shall have all the qualities of negotiable instruments under the law merchant, and the negotiable instruments law of the Commonwealth of Pennsylvania.

Section 12. Competition in Award of Contracts.—If any project or any portion thereof, or any improvement thereof, shall be constructed pursuant to a contract, and the estimated cost thereof exceeds twelve thousand dollars (\$12,000), such contract shall be awarded to the lowest responsible bidder after due advertisement and subject to the provisions of law applicable to the Department of **[Property and Supplies] General Services**. The authority may, to the same extent, and under the same rules and regulations applicable to the Department of **[Property and Supplies] General Services**, make rules and regulations for the submission of bids and the construction or improvement of any project or portion thereof: Provided, however, That where there exists an agreement whereby the college may acquire legal title to the said project, contracts for construction, reconstruction, repair or work of any nature, or purchase of furnishings, machinery or equipment shall, if the college so requests, be awarded without regard to the limitations of this section 12 or any other statutory provision or regulation requiring competitive bidding. No contract shall be entered into for the construction or improvement of any project or portion thereof, or for the purchase of materials, unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the authority, and in an amount fixed by the authority, for the faithful performance of the contract, and such contract shall be accompanied by an additional bond for the protection of those who furnish labor and materials, for such amount and subject to the same terms and conditions as required by the authority. All construction contracts shall provide, among other things, that the person or corporation entering into such contract with the authority will pay for all materials furnished **[in] and** services rendered, for the performance of the contract, and that any person or corporation furnishing such materials or rendering such services may maintain an action to recover for the same against the obligor in the undertaking as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued. Nothing in this section shall be construed to limit the power of the authority to acquire or construct any project or portion thereof or any addition, betterment, or extension thereto, directly by the officers, agents and employes of the authority, or otherwise than by contract.

Subject to the aforesaid, the authority (but without intending by this provision to limit any powers of the authority), may enter into and carry out such contracts, or establish or comply with such rules and regulations concerning labor and materials and other related matters in connection with any project or portion thereof as the authority may deem desirable, or as may be requested by any Federal agency that may assist in the financing of such project or any part thereof.

Nothing in this section 12 shall be construed as precluding the transfer to the authority by purchase or otherwise of any completed project, or any project in course of construction and the assignment to the authority of the relevant contracts for constructing, furnishing or equipping such projects and the acceptance thereof by the authority.

Section 14. Limitation of Powers.—The Commonwealth does hereby pledge to, and agree with, any person, firm or corporation or Federal or other governmental agency subscribing to, or acquiring, the bonds to be issued by the authority for the acquisition, construction, extension, *financing*, improvement, or enlargement of any project, or part thereof, or for refunding purposes, that the Commonwealth will not limit or alter the rights hereby vested in the authority, or limit or alter any provisions for the security and protection of the authority and its bondholders contained in this act or as now provided by law, until all bonds at any time issued, together with the interest thereon, fully are met and discharged. The Commonwealth further does pledge to and agree with the United States and any other Federal or other governmental agency that, in the event that any such agency shall construct or contribute any funds for the acquisition, construction, extension, *financing*, improvement or enlargement of any project or any portion thereof, the Commonwealth will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the continued maintenance and operation of the project, or the improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and any such agency, and the authority shall continue to have and may exercise all power herein granted so long as the same shall be necessary or desirable for the carrying out of the purposes of this act and the purposes of the United States and any Federal or other governmental agency in the construction or improvement or enlargement of any project or such portion thereof.

Section 4. This act shall take effect immediately.

APPROVED—The 23rd day of March, A. D. 1984.

DICK THORNBURGH